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SUBJECT: BERISHA VS. SOLLAKU: A HIGH LEVEL SMACKDOWN

Classified By: Ambassador Marcie B. Ries for reasons 1.4 (b) and (d).

¶1. (C) SUMMARY: Over the last eight months, PM Berisha and his allies have engaged in a campaign to dump General Prosecutor Sollaku, claiming he is a major obstacle to progress in the fight against crime and corruption. Berisha has publicly accused Sollaku of everything from laziness to ties with organized crime in an effort to discredit his one-time legal advisor and force him out of office. Sollaku, whose energy and record of accomplishment as the Government's chief Prosecutor might be questionable, has been able to hold his position because by law he can only be replaced by the President, and Moisiu is reluctant to allow Berisha to run roughshod over his prerogatives. This eight-month battle came to a head May 2 as the DP began arguments to have Parliament embark on a formal investigation of Sollaku's conduct -- an investigation which DP parliamentarians hope will end in either his dismissal or resignation. While Sollaku clearly has not been energetic enough in the fight against crime and corruption, Berisha's public and thus-far unsubstantiated charges of corruption are clearly inconsistent with an emphasis on rule of law. It is likely that the DP majority will decide to fire Sollaku even though the Constitution sets the bar for proof of misconduct very high. Meanwhile, much energy will be wasted and much of the good work the DP has done on its domestic program overshadowed by this unseemly dispute. This may also end in a difficult Constitutional confrontation between a Parliament demanding the GP's removal and President who insists on defending him. End Summary.

A PLANNED ATTACK

¶2. (C) Since coming to power in September 2005, the DP-led government has waged a public and increasingly harsh campaign to remove General Prosecutor Sollaku from his post. Under Albanian law, however, the President is the only person who can actually order the dismissal of the General Prosecutor (GP) and, thus far, President Moisiu has given no indication that he intends to dismiss Sollaku. PM Berisha has spearheaded the anti-Sollaku drive, initially instructing Speaker Topalli to simply demand in a private meeting that Sollaku resign on the grounds that he simply has not pursued

his job with sufficient energy and seemed unable or unwilling to "play ball" with the government's vigorous anti-corruption program. Stymied by Sollaku with Moisiu behind him, Berisha recently decided to play hardball by stating in an emotional television appearance that Sollaku has ties to criminal elements.

¶3. (C) In Parliament, initial indications are that the DP intends to revisit GP action/inaction in over 80 particular cases. The DP noted six specific categories of inquiry:

- failure to resolve "serious and shocking" criminal cases;
- serving as an instrument of political blackmail against MPs;
- failure to prosecute charges on organized trafficking issues;
- abuse of office;
- issuing illegal orders; and
- applying a double standard in cases involving relatives of people in power.

BERISHA AND SOLLAKU HAVE A HISTORY

¶4. (C) At first glance, Berisha and the DP's targeting of Sollaku would seem apolitical -- Sollaku was Berisha's legal advisor from 1992-1996 and no one claims that he is affiliated with the opposition-leading Socialist Party (SP). Appointed by President Meidani in 2002, Sollaku's designation was initially welcomed by Berisha. (Note: There is no time limit for a GP's term in office). As overall perceptions of crime and corruption worsened considerably over the next three years, Berisha made the fight against corruption the centerpiece of his party's campaign to return to power in 2005. As the country's chief law enforcement officer during a time of relatively few prosecutions of serious corruption or organized crime, Sollaku was painted by Berisha as "part of the problem." Sollaku himself has vigorously denied the so far unsubstantiated allegations against him and has taken particular umbrage at recent attempts to question the actions of his wife, a judge on Tirana's Court of Appeals.

ANXIETY OVER DP TACTICS

¶5. (C) The DP's campaign against Sollaku has provoked considerable consternation and much hand-wringing among opposition parties and some, but not all, constitutional scholars. The opposition has framed the debate as one of a struggle against Berisha's authoritarian tendencies, and claim that Berisha intends to subjugate the independence of the GP's office to his will. The opposition and others also claim that the DP's tactics and ultimate goal are unconstitutional.

CONSTITUTIONAL ISSUES AND DUE PROCESS

¶6. (C) Under Albanian law, the President may dismiss the GP upon the proposal of Parliament. The Constitution also provides that Parliament may instigate investigations for dismissal of the GP for the following reasons: "serious violations of the law during the exercise of his duties, for mental or physical incapacity, and for acts and behavior that seriously discredit the position and reputation of the Prosecutor."

¶7. (C) The legal debate centers on whether this particular investigation runs afoul of the constitutional provision that prohibits Parliament from bringing criminal charges or exercising the attributes of courts. Some claim that Sollaku's due process rights have already been violated due to the publicity the DP has brought to allegations against him and because Sollaku has been given only a brief amount of time to formally respond to Parliament. Sollaku supporters also say that the Constitution implicitly forbids Parliament from requiring Sollaku to give an account of specific cases or decisions. This point is apparently based on article 53 of the Constitution which says that the GP cannot inform Parliament on specific cases, but only on the state of criminality in general.

¶8. (C) A somewhat similar in 2002 when Parliament, in a formal investigation, to dismiss then General P`ts and behavior

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President Meidani dismissed Rakipi.

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been given an opportunitl Q Q Q Q`QQ@QAAnt's accusations. The co5Q Q`Q`Q`Q`QAaQA@@Qr,
h/lding that due process rights applied to disciplinary
proceedings as well as court proceedings. Nonetheless,
Parliament subsequently ignored the ruling and Rakipi was
replaced by Sollaku.

HOW IS HE DOING?

¶9. (C) To date, no one has come forward with any specific
evidence demonstrating that Sollaku has ties to crime. When
asked, Parliament Speaker Topalli told the Ambassador that
she had no evidence herself Sollaku was dirty, but was
absolutely convinced that the investigation would reveal
something. OSCE's Head of Mission Vacek told us he was
"unsatisfied" with Sollaku's explanations to him about
prosecutions in Vlore involving organized criminal activity.
Our OPDAT specialist, who has worked closely with Sollaku
over the past two and a half years, said that he is unaware
of anything suggesting criminal ties. Nevertheless, he has
also been frustrated, at times, with Sollaku's apparent lack
of aggressiveness in pursuing some cases, the most notable of
which being charges of bribery against former Ambassador
Tarifa. (Note: OPDAT's specialist said that Sollaku had a
videotape of Tarifa discussing a bribe, but would not pursue
the case without "more documents.")

COMMENT: DIRTY POLITICS BUT PROBABLY CONSTITUTIONAL...SO FAR

¶10. (C) Politics here is a hard-edged game and the public
campaign against Sollaku, however unseemly, should come as no
surprise. The real issue is whether Berisha and company
will, deliberately or inadvertently, cross the line and
interfere with an independent institution in an
unconstitutional manner. On this score, we believe that
Parliament's investigation is an appropriate legal path for
the GoA to follow, but the degree of publicity surrounding it
and the fairness accorded to Sollaku to respond may present
due process issues.

¶11. (C) Whatever the outcome of the investigation -- almost
certain to be a muddled affair at best -- Sollaku's ultimate
fate may already be predetermined. Even if Moisiu refuses to
dismiss him, Sollaku's ability to do his job effectively may
already be too compromised given the ugliness of the dispute.

Lurking in the background are also increasing doubts from
more objective viewers about Sollaku's competence. His
supporters are notably silent on how good a job he has done
and Sollaku's attempts to rally the international community
to his side have been both clumsy and ineffective. In the
end, his legacy may be one of a staunch defender of the
independence of the GP's office, but as a mediocre fighter
against crime and corruption.

¶12. (C) If Sollaku is dismissed, he would be the second GP
in a row to suffer such a fate. The opposition will claim,
and perhaps rightly, that Sollaku's dismissal would cause
irreparable injury to the independence of the GP's office.
There will also be speculation that Berisha's thirst for full
control of the apparatus of crime enforcement will only be
fueled more by a "victory" against Sollaku and that other
independent institutions would be at greater risk of
political interference. The validity of the later charge
will likely depend on the strength of the DP's case against
Sollaku, the manner in which the President acts, and the
degree to which Sollaku's successor is viewed as a strong,
independent (read: consensual) personality or simply as a DP
puppet.

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